

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FRENCH POWDER PUFF COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3689

Decision No. CU -0519

AMENDED PROPOSED DECISION

By Proposed Decision dated September 20, 1967, the Commission denied this claim for claimant's failure to meet the burden of proof in that he failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

The claimant having thereafter submitted additional evidence in support of the claim, and the matter having been duly considered, it is

ORDERED that the Proposed Decision be and it is hereby amended to read as follows:

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

A partner of the claimant has certified that the claimant was organized as a partnership in the State of New York and that all times between January 23, 1946 and presentation of this claim on June 1, 1967, 100% of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record reflects that both of claimant's partners are nationals of the United States.

The record contains copies of claimant's invoices, bank correspondence, and freight way bills reflecting the following sales to Cuban consignees.

<u>DATE OF DRAFT</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>TERMS</u>
October 7, 1959	Perfumeria Dryalis, S.A. (\$228.51 less \$22.85 Commission)	\$205.66	60 Days
October 16, 1959	Casa Suarez (\$444.10 less \$44.41 Commission)	399.69	60 Days
November 12, 1959	Drogueria Alegret	438.82	60 Days
December 7, 1959	Espina & Cia. (El Globo)	250.49	60 Days
December 7, 1959	Mon & Cia., S. en C. (\$685.35 less \$69.93 Commission)	615.42	Sight

Additionally, the record contains copies of bank correspondence in which it was stated that the first two items were paid in local currency to Cuban collecting banks as of December 29, 1959 and December 22, 1959, respectively, and that these banks were awaiting dollar reimbursement releases from the Exchange Control Board, a Cuban Government agency. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which

resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 /July-Dec. 1966/; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049),

Although claimant is making a claim for the entire amount of each invoice, the evidence submitted reflects that it authorized the Cuban collecting banks to pay specified amounts from the indicated invoices to claimant's representative in Cuba as his commission. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount of the sales, less the amounts claimant authorized the collecting banks in Cuba to pay its representative as a commission.

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
December 15, 1959	\$615.42
December 23, 1959	399.69
December 30, 1959	205.66
January 13, 1960	438.82
February 8, 1960	<u>250.49</u>
	\$1,910.08

the dates following the acknowledgement of payment of the drafts which were paid and the dates on which the unpaid drafts became due.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that FRENCH POWDER PUFF COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Nine Hundred Ten Dollars and Eight Cents (\$1,910.08) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., and  
entered as the Amended Proposed  
Decision of the Commission

APR 24 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-3689

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FRENCH POWDER PUFF COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 3689

Decision No. CU 519

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,047.57, was presented by the French Powder Puff Company, a partnership, and is based upon the asserted loss of proceeds from merchandise shipped to consignees in Cuba. No evidence of the United States nationality of the partners was submitted.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that it shipped merchandise to consignees in Cuba, that drafts were drawn on and paid in local currency to Cuban Banks by these consignees, and that it has not received the proceeds from these drafts. By Commission letter of July 21, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.


On August 30, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

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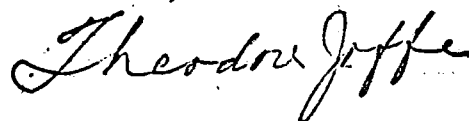
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a United States national of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

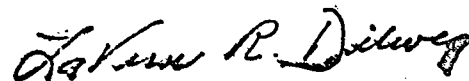
**OCT 25 1967**



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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